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COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

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ROBERT L. SIMMONS, II, STAFF DIRECTOR

March 8, 2011

The Honorable Clifford L. Stanley, Ph.D.
 Under Secretary of Defense
 for Personnel and Readiness
 4000 Defense Pentagon
 Washington, DC 20301-4000

Dear Secretary Stanley:

My purpose in writing is to request your assistance in providing additional information regarding the policy and procedures that have been put in place to support implementation of the repeal of Don't Ask, Don't Tell.

I have enclosed a list of questions that have surfaced following your January 28, 2011 news conference with Marine General James Cartwright, Vice Chairman of the Joint Chiefs of Staff, and the series of briefings received by the staff of the Military Personnel Subcommittee over the past month. I believe the answers to these questions will be essential to the effective consideration of the implementation process by the Congress.

My purpose is to ensure that the Nation and the military departments are fully prepared to implement the repeal in a manner that protects the combat readiness of our forces. I expect that these questions will be at the center of the discussion during hearings that are currently scheduled within the Committee on Armed Services for the month of April. In that regard, it would be of great benefit to get your response by March 24, 2011.

I appreciate your assistance in this matter.

Sincerely,

Joe Wilson

Joe Wilson
 Chairman
 Military Personnel Subcommittee

AGW:jbw
 Enclosure



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MAR 30 2011

PERSONNEL AND
READINESS

The Honorable Joe Wilson
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515-6035

Dear Mr. Chairman:

Thank you for your letter dated March 8, 2011, requesting additional information regarding the policy and procedures that have been put in place to support implementation of the repeal of 10 U.S.C. §654, commonly known as "Don't Ask, Don't Tell."

I have enclosed my response to each of your questions regarding the implementation of the repeal of "Don't Ask, Don't Tell." Based on the Secretary of Defense's direction, I am leading the implementation process for the Department, and I want to assure you that the men and women of the Armed Forces are preparing for the repeal in a purposeful and responsible manner.

Thank you for your continuing support and concern for the men and women of the Armed Forces.

Sincerely,

Clifford L. Stanley

Enclosure:
As stated

Justification for the Original Law

Question: Of the fifteen findings regarding readiness, good order, and unit cohesion included in section 654, of title 10, United States Code, which remain valid? What is the justification for moving ahead with repeal in spite of the validity of some finding?

Answer: In my view, findings 1 through 12 and 14 still remain valid. Thirteen and 15 do not. As stated in the Don't Ask, Don't Tell Repeal Act of 2010, repeal will only take place when the President, Secretary of Defense, and Chairman of the Joint Chiefs certify that the Department of Defense has prepared the necessary policies and regulations, and that implementation of those policies and regulations is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

Justification for Repeal

Advocates for repeal of the law justify it as "the right thing to do."

Question: How would implementation of repeal improve standards of military readiness, effectiveness, unit cohesion, and recruiting and retention in the military?

Answer: As the Chairman of the Joint Chiefs of Staff has stated, repeal of 10 U.S.C. §654 will improve the military because no longer will able men and women who want to serve and sacrifice for their nation have to sacrifice their integrity to do so. Repeal will only take place when the President, Secretary of Defense, and Chairman of the Joint Chiefs certify that the Department of Defense has prepared the necessary policies and regulations, and that implementation of those policies and regulations is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces.

Risk of Dysfunctional Repeal Process

Question: Did the Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell" and the Support Plan for Implementation, November 30, 2010 (Comprehensive Review) underestimate the difficulty of implementing repeal during war and miscalculate the willingness of the force to accept repeal by misinterpreting the survey response "equally as positively or negatively" and counting it as a positive response signaling acceptance of repeal?

Answer: The survey questions in the survey administered by the Department's Comprehensive Review Working Group asked Service members to make predictions about the impact of repeal, not to express their support for or against a change in policy. I agree with the assessment of the Working Group that it is appropriate, from the standpoint of assessing the impact of repeal, to consider the "mixed" responses alongside the "no effect" and "positive" responses. A response by Service members of "equally as positively or negatively," when asked to predict impact of

repeal, would support an assessment that the repeal can be implemented without adverse impact to military readiness.

Collecting Data on Gay/Lesbian Service Members

Question: Given the decision to not gather statistical information about the sexual orientation of inductees or current military personnel, how will the Department of Defense evaluate the consequences of repeal and protect the rights of gays/lesbians?

Answer: Sexual orientation is a personal and private matter. DoD components are not authorized to request, collect, or maintain information about the sexual orientation of Service members except when it is an essential part of an otherwise appropriate investigation or other official action. Moreover, the rights and responsibilities of all Service members—regardless of sexual orientation—are equally protected under the UCMJ, regarding professional comportment, discrimination, harassment, and fraternization. Thus, demographic information regarding sexual orientation of Service members will not be required.

Privacy/Cohabitation

The Comprehensive Review recommended that the Department of Defense expressly prohibit berthing or billeting assignments or the designation of bathroom facilities based on sexual orientation.

Question: Given that commanders will retain some authority to alter cohabitation situations, what will procedures/regulations specify with regard to associated process, criteria, and costs?

Answer: Commanders are equipped to deal, on a case-by-case basis, with issues that may arise with specific individuals within their units. Consistent with current policy, commanders have discretion to alter billeting assignments in accordance with Service policy in the interest of maintaining morale, good order and discipline, and consistent with performance of the mission. Any decision by the commander will not be based on sexual orientation, but will be based on maintaining good order and discipline within his/her unit.

Privacy/Cohabitation

The Comprehensive Review recommended that the Department of Defense expressly prohibit berthing or billeting assignments or the designation of bathroom facilities based on sexual orientation.

Question: Once a commander decides to accommodate a request to alter a billeting arrangement based on sexual orientation, won't that determination amount to de facto evidence that gay/lesbian service members have been stigmatized and unit cohesion disrupted?

Answer: No, a commander has a range of options to consider using in leading his/her unit before making a decision to alter berthing or billeting assignments in accordance with Service policy. The commander has the experience and judgment to determine what is best in maintaining morale, good order and discipline consistent with performance of the mission. Such a decision to alter berthing/billeting will be made only after the commander has deemed it best for the unit, and will not be based solely on sexual orientation. Therefore, such a decision will not amount to

de facto evidence that gay and lesbian Service members have been stigmatized and unit cohesion disrupted.

Privacy/Cohabitation:

The Comprehensive Review recommended that the Department of Defense expressly prohibit berthing or billeting assignments or the designation of bathroom facilities based on sexual orientation.

Question: Given the intimacy of billeting in the military, why is there so much emphasis on separate housing for heterosexual male and females, but no concern about gays and lesbians being housed with members of the same sex?

Answer: The creation of separate facilities based on sexual orientation is prohibited, and commanders may not establish practices that physically segregate Service members according to sexual orientation. Berthing and billeting assignments will be made without regard to sexual orientation. Any issues that arise will be handled by commanders on a case-by-case basis.

Standards of Conduct

Question: If personal conduct rules are intended to apply both on- and off-installations and equally to heterosexual and gay/lesbian service members, does the Department of Defense believe that greater sensitivity or unease with gay/lesbian personal displays of affection will demand policies to restrict heterosexuals' conduct that is viewed in our society as routinely acceptable behavior?

Answer: No. Enforcement of Service standards of conduct, including those related to public displays of affection, dress and appearance, and fraternization will be sexual orientation neutral. All members are responsible for upholding and maintaining the high standards of the U.S. military at all times and at all places. We do not anticipate any change to the standards of conduct, but will continue to review them as always.

Standards of Conduct

Question: Will the Department of Defense clarify the definition of fraternization to make certain that it includes gay/lesbian service members and has there been a projection regarding the potential for increased numbers of fraternization cases after repeal?

Answer: The policies that currently exist on fraternization apply regardless of sexual orientation. The Services retain the authority to counsel, discipline, or involuntarily separate those Service members who fail to obey established standards; leaders are expected to take corrective or disciplinary action to preserve morale, good order and discipline and unit cohesion.

Standards of Conduct

Question: Will implementation procedures continue to bar behavior and verbal comments that convey an unwelcome sexual message, whether heterosexual or gay/lesbian? For example, the

display of suggestive calendars, photographs, pictures, or statements conveying an unwanted sexual message that amounts to a "hostile work environment."

Answer: Yes, the Department will continue to bar inappropriate sexual messages, regardless of sexual orientation.

Standards of Conduct

Question: Will gay/lesbian personnel in different chains of command be permitted to date each other and live with each other as "partners" in barracks?

Answer: Upon repeal, existing standards of conduct, including fraternization and living conditions, shall continue to apply to all Service members regardless of sexual orientation. In cases where conduct is prohibited, leaders shall be expected to take such appropriate corrective or disciplinary action as they determine may be necessary to preserve morale, good order and discipline, unit cohesion, military readiness, and combat effectiveness.

Complaint Process

Question: How will procedures/regulations ensure that complaints are sufficiently investigated to both protect service members from false accusations and complaints from being labeled as bias against gay/lesbian service members?

Answer: The current rules regarding processing of complaints through the chain of command, to inspectors general, or otherwise, will remain in effect and are sufficient to ensure that Service members are protected from both false accusations, and from being labeled as biased against gay and lesbian Service members.

Complaint Process

Question: Will procedures/regulations require that data on sexual misconduct incidents, both consensual and non-consensual, are compiled and publicly reported, to include specific information regarding sexual orientation?

Answer: No. Present procedures/regulations do not require that data on sexual misconduct incidents regarding sexual orientation be compiled and publicly reported. Furthermore, the Services are not authorized to request, collect, or maintain information about sexual orientation except when such information is deemed to be an essential part of an investigation or other official action.

Complaint Process

Question: The Comprehensive Review made clear that sexual orientation discrimination complaints should not be conducted by Military Equal Opportunity (MEO) authorities as would be the case for protected classes (race, sex, etc), but isn't it true that the Comprehensive Review and the implementation training materials suggest that MEO authorities will play important

advisory roles in policy development and training that will make it difficult to divorce MEO from the gay/lesbian harassment and discrimination complaint process?

Answer: Commanders are charged with promoting an environment free from barriers that prevent Service members, regardless of sexual orientation, from rising to the highest level of responsibility possible. Although sexual orientation will not be designated as a class under the Military Equal Opportunity program, commanders may call upon Military Equal Opportunity personnel to review policies and programs that may cause barriers in the working environment and impact the treatment of all Service members. Complaints regarding harassment or discrimination based on sexual orientation will be dealt with through existing mechanisms available for other such complaints not involving race, color, sex, religion or national origin, namely, the chain of command, the Inspector General, and through other means determined by the Services. When criminal, complaints of harassment may be referred to law enforcement for investigation. The Department does not believe that on a case-by-case basis it will be difficult to divorce MEO activities from the gay and lesbian harassment and discrimination process.

Benefits

Question: Now that the Constitutionality of the Defense of Marriage Act will not be defended in court by the Administration, has the Department of Defense begun evaluating a change in its current position regarding benefits for gay/lesbian service members and their families, the implications for similarly situated heterosexual partners, and the cost of new benefits?

Answer: There will be no changes at this time to eligibility standards for military benefits, including applicable definitions. The Department will continue to study existing benefits to determine those, if any, that should be revised, based on policy, fiscal, legal, and feasibility considerations. The Department will continue to comply with the Defense of Marriage Act, consistent with the Attorney General's statement of February 23, 2011, that "the President has informed me that the executive branch will continue to enforce the law."

Benefits

Question: Will the reassessment of the benefits issue be completed and decisions formulated before the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and the President certify that implementation of repeal can proceed?

Answer: The Department has not changed its current position regarding benefits for gay and lesbian Service members and their families as stated in the Repeal Implementation Policy Guidance Memorandum. The Department will continue to study existing benefits to determine those, if any, that should be revised, based on policy, fiscal, legal, and feasibility considerations.

Benefits

Question: Now that there may well be instances where a privilege or benefit will be provided to partners in a committed relationship, what are the Department of Defense definitions for "partner" and "committed relationship" for gays/lesbians and heterosexuals?

Answer: The Department has not changed its current position regarding benefits for gay and lesbian Service members and their families as stated in the Repeal Implementation Policy Guidance Memorandum. For benefits which Service members may designate anyone of their choice as beneficiary, Service members may designate anyone, including their partners in committed relationships, heterosexual or homosexual, however the terms "partner" and "committed relationship" may be defined.

Education and Training

The Comprehensive Review recommends a mandatory "three-tiered" education program, starting with judge advocates, recruiters, and chaplains, then commanders and leaders, and, finally, the remainder of the force.

Question: How will the training prepare male and female personnel for routine exposure to gay/lesbian personnel of the same sex in living conditions offering little or no privacy?

Answer: Members of the Armed Forces accept living and working conditions that are often austere, primitive, and characterized by forced intimacy with little or no privacy. The training explains that compliance with professional standards of conduct will be essential to fostering respect among fellow Service members and resolving concerns about privacy.

Education and Training

The Comprehensive Review recommends a mandatory "three-tiered" education program, starting with judge advocates, recruiters, and chaplains, then commanders and leaders, and, finally, the remainder of the force.

Question: Will the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff proceed with certification of readiness for repeal if the education and training program has not been completed and the effectiveness of the program assessed?

Answer: Each of the Services, on the best military advice, will inform the Secretary of Defense and Chairman of the Joint Chiefs when their force is prepared to implement repeal. While certification by the Secretary and the Chairman does not require a hundred percent of each Service to be trained, each Service is committed to confirming training for as high a percentage as possible as quickly as possible in order to inform the Secretary and Chairman when their force is prepared to implement repeal. The President, Secretary of Defense, and Chairman of the Joint Chiefs will utilize their own judgment in making the certification provided for in the Don't Ask, Don't Tell Repeal Act of 2010, which includes certifying that that implementation of the new policies and regulations written by the Department is consistent with the standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces. Training the force is an essential component to ensuring implementation is consistent with these standards. Each of the Services will inform the Secretary and Chairman when its force is prepared to implement repeal.

Education and Training

The Comprehensive Review recommends a mandatory "three-tiered" education program, starting with judge advocates, recruiters, and chaplains, then commanders and leaders, and, finally, the remainder of the force.

Question: What type of training and education will be required for family members and children in DoD family support programs, schools, and child care centers?

Answer: Mandatory training is not required for family members and children. All federally employed Service family support staff will receive Tier 1 (Expert level) training to assist Service members and their families in discussing topics related to repeal. These family support staffs will be the foundation for addressing family member concerns. Family members will be informed of the changed policy and advised to seek any specific information about repeal through Service family support staff and by Service members who received mandatory training. Links to helpful resources for talking to children and youth about repeal can be placed on military family websites upon request. In addition, the Services can post DADT Repeal Awareness Training links on Military Services Family Support websites, Military OneSource.com and MilitaryHOMEFRONT.DoD.mil. The DoD and the Services will regularly engage with Service Family members, schools, and child care centers to reassess their readiness and where needed, improve family engagement initiatives as DoD transitions from an environment in which gay and lesbian family matters, have not been contemplated to an environment in which they are.

Impact on Combat Unit Readiness

Question: Given survey results that showed service members in ground combat units possessed greater concern about the fragility of unit cohesion and the impact of openly serving gays/lesbians, what additional research has been done to understand the unique circumstances associated with these units and the special precautions that are needed?

Answer: No additional research has been done, and the Department does not believe that additional research is necessary in order to implement repeal. The Services and combatant commands will work together to ensure Service members are trained, regardless of location. The Services are training most members before deployment. They will provide training to those deployed as the opportunity presents itself, based on the type of unit and mission they have. If members do not receive training while deployed, they will be trained upon return.

Impact on Combat Unit Readiness

Question: Will there be any special effort to change attitudes concerning acceptance of gays/lesbians in ground combat units, on submarines, and within other units where cohesion is critical to combat capability?

Answer: No. Service members are not expected to change their personal or religious beliefs about homosexuality but they are expected to treat all others with dignity and respect, consistent with the core values that already exist in each Service.

Impact on Combat Unit Readiness

Question: Was any consideration given to allowing units deployed to combat zones to forgo conducting the education and training associated with repeal and avoid the disruption to unit cohesion even though it would delay training completion within the services?

Answer: Yes, consideration was given to implement the training with minimal impact to the force. The majority of the force will be trained in pre- and post-deployment training.

Burden Placed on Commanders and Service Members

Question: What assurances can be given that commanders who report problems during implementation of repeal will receive assistance and not be subject to career penalties?

Answer: Current policies and procedures allow for free and open discussion within the chain of command without any threat of reprisal.

Burden Placed on Commanders and Service Members

Question: What procedures/regulations will be established to provide individuals an avenue to call for investigation of problems in their unit associated with openly serving gays/lesbians and will the process allow service members the opportunity to make such reports should their commanders be reluctant to take action?

Answer: Service members are encouraged to use the chain-of-command as the primary and preferred channel for resolving problems in their unit, including but not limited to those involving gay and lesbian personnel. The Service member also may take the problem to the Inspector General or work through other channels determined by the Services.

Burden Placed on Commanders and Service Members

Question: What procedures/regulations will be established to ensure that service members have an avenue to report problems associated with openly serving gays/lesbians without fear of retaliation by peers or by superiors?

Answer: No new procedures/regulations are needed. Current policies and procedures allow for free and open discussion within the chain of command, and through other specified avenues, such as Inspectors General, without any threat of reprisal.

Burden Placed on Commanders and Service Members

Question: Will there be procedures and regulations to provide commanders the option to remove personnel from units who disrupt unit cohesion, good order, and discipline, either because they are gay/lesbian or are opposed to openly serving gays/lesbians?

Answer: Commanders retain the authority to counsel, discipline, or recommend for separation those Service members who fail to obey established standards; leaders are expected to take corrective or disciplinary action to preserve morale, good order and discipline and unit cohesion.

Family Education

The Comprehensive Review recommends that Internet links be provided to assist families in how to talk to children about repeal.

Question: What links would the Department of Defense consider for this purpose and will they reflect perspectives that both support and oppose service of gays/lesbians?

Answer: Information for families is included in each Service's training plan. DADT Repeal Awareness Training Materials will be posted on the Military Services' Family Support websites, Military OneSource.com and MilitaryHOMEFRONT.DoD.mil.

Assignments

Question: Will gay/lesbian troops be deployed to countries where homosexuality is punished as a crime and where they might be subjected to local judicial action?

Answer: There will be no change to assignment policies. All Service members will continue to be eligible for world-wide assignment without consideration of sexual orientation. Service members assigned to duty, or otherwise serving in countries in which homosexual conduct is prohibited or restricted, will abide by the guidance provided to them by their local commanders. Because gay and lesbian Service members assigned to serve in countries that criminalize homosexual conduct or homosexuality generally, the guidance provided by commanders will include information on host-nation laws and related military policies regarding homosexuality and homosexual conduct.

Assignments

Question: What precautions are being considered to minimize mission disruption with regard to gay/lesbian service members serving with foreign nationals from countries where homosexuality is illegal?

Answer: Every Service member will continue to be trained in local cultures and customs, as we currently do through the education and training programs for overseas deployments. Today we serve alongside those countries that already have openly serving gay and lesbian Service members with no disruption. All Service members will continue to be eligible for world-wide

assignment without consideration of sexual orientation. Service members assigned to duty, or otherwise serving, in countries or with foreign nationals for whom homosexual conduct is prohibited or restricted will be informed by their local commanders regarding host-nation laws and related military policies on homosexuality and homosexual conduct.

Assignments

Question: Has the Department of Defense assessed the additional risks associated with openly serving gay/lesbian service members being captured by potential adversarial nations where law or cultural mores ban homosexual behavior?

Answer: Not specifically. With our All Volunteer Force, all Service members will continue to be eligible for world-wide assignment without consideration of sexual orientation.

Religious Issues

Question: What types of disciplinary measures and penalties will apply to personnel, including chaplains, who object to training that promotes acceptance of the gay/lesbian law/policy?

Answer: We will continue to be a respectful and disciplined force. Disciplinary measures may be necessary only if personnel take actions that adversely affect good order and discipline. While the training is mandatory, it is not about changing beliefs. Chaplains are not required to take actions that are inconsistent with their religious beliefs. Existing policy regarding chaplains' free exercise of religion and duty to care for all continues to apply.

Religious Issues

Question: Will there be clear guidelines published to clarify the types of religious and moral statements in opposition to homosexuality that would be acceptable and the types of statements that would be considered unacceptable because they are detrimental to morale, good order, discipline, and cohesion and how would the latter statements be punished?

Answer: Service standards of conduct and equal opportunity policies are being reviewed as a part of the pre-repeal process. In order to meet the intent of this review, I have asked each Service to review its standards to ensure they provide adequate guidance in relevant areas, apply uniformly to all personnel, and promote an environment free from personal, social or institutional barriers that prevent Service members from rising to their highest potential. Emphasis will be placed on the following areas: public displays of affection, dress and appearance, nepotism, unprofessional relationships, conflicts of interest, and zero tolerance for harassment or hazing. Clear responsibility of leaders, supervisors, and subordinate personnel at all levels is essential to foster unit cohesion, good order and discipline, respect for authority, and mission accomplishment. The policies will ensure sexual orientation neutrality and will address that protections for Service members' individual expression and free exercise of religion already exist and are adequate. In today's military, people of different moral and religious values work, live and fight together. This is possible because they treat one another with dignity and respect. This will not change. Statements that are detrimental and are unacceptable will be dealt with on a case-by-case basis and are well within the chain of command's ability to correct.

Religious Issues

Question: If a member desires a religious accommodation that reflects an inability to live with or even work directly with gay and lesbians service members, what would the process be to evaluate and adjudicate such a religious accommodation under DoDI 1300.17 and would it include a process for appeal of decisions to elevated levels of command?

Answer: It is DoD policy that requests for accommodation of religious practices should be approved by commanders when accommodation will not have an adverse impact on mission accomplishment, military readiness, unit cohesion, standards, or discipline (DoDI 1300.17). If the accommodation will have an adverse impact on mission, commanders will continue to use their existing administrative options, including reassignment and administrative separation. Depending on the exact administrative action, the appeal process that currently exists can be exercised.

Religious Issues

Question: While it is well recognized that chaplains must be prepared to minister to all service members, has there been any consideration of providing chaplains greater flexibility to provide counseling and interact with gays/lesbians in a manner that is consistent with the chaplain's religious beliefs, but inconsistent with repeal implementation guidelines with regard to being respectful and nondiscriminatory?

Answer: No, there will be no changes to policies concerning the Chaplain Corps of the Military Departments and their duties. Chaplains' First Amendment freedoms and their duty to care for all will not change.

Religious Issues

Question: If a chaplain is removed from service by his or her sponsoring organization, either by the chaplain's action or the actions of the sponsoring organization, will the chaplain be required to fulfill active duty service commitments in a capacity other than as a chaplain?

Answer: If a chaplain loses his/her Ecclesiastical Endorsing Agent (religious organization representative) endorsement, then the chaplain will need to acquire another endorser or begin the process of being separated from the military.

Religious Issues

Question: What is the estimated number of chaplains and others who are likely to decline re-enlistment due to religious and moral beliefs about the open service of gays and lesbians?

Answer: I do not have this data. None of the ecclesiastical endorsing agencies that responded to the CRWG stated that it would withdraw its endorsements for military chaplains if the law were repealed. In the Working Group's discussion groups with chaplains, while many expressed

opposition to a change in policy, nearly all indicated that they were willing to continue their ministry in the military.

Recruiting and Retention

Question: Assuming that recruits understand that gays/lesbians would be serving openly, what is the current estimate regarding the impact of repeal on recruiting?

Answer: It was the assessment of the CRWG and is the assessment of the Department of Defense that repeal would not cause the Services to fail to meet their recruiting goals. This assessment is based, in part, on CRWG survey results showing a solid majority of respondents believe that repeal would have a positive, mixed, or no effect on recruiting. The Department will continue to carefully monitor the Services' achievement of their recruiting goals, as we currently do.

Recruiting and Retention

Question: What is the Department of Defense assessment of the impact of openly serving gays/lesbians on the attitudes of people who influence recruit candidates?

Answer: It was the assessment of the CRWG and is the assessment of the Department of Defense that repeal would not cause the Services to fail to meet their recruiting goals. The ability to recruit qualified individuals into military service depends on a large number of factors, including referrals. Nearly one-half (47 percent) of Service members surveyed by the CRWG said that repeal would have no effect on their willingness to recommend military service to a family member or close friend; 6 percent said it would have a positive effect; 10 percent said it would have a mixed effect; and 27 percent said it would have a negative effect. The Department will continue to carefully monitor the Services' achievement of their recruiting goals, as we currently do.

Recruiting and Retention

Question: What is the estimated number of service members who are likely to consider ending their careers because gays/lesbians serve openly and how will this data be tracked?

Answer: It was the assessment of the CRWG and the assessment of the Department of Defense that repeal would not cause a drop to occur and the Services to fail to meet their retention goals. The experience of our foreign allies indicates that far fewer military members actually left military service after a change in their policy than had indicated they would. Additionally, the survey indicated that other factors are more important than Don't Ask, Don't Tell to Service members as they contemplate their future military service. The Department will continue to carefully monitor the Services' achievement of their retention goals, as we currently do.

Recruiting and Retention

Question: When during the implementation process will recruiting briefings be adjusted to advise recruits that they will be serving with openly serving gay/lesbian service members and remove references to inappropriate homosexual conduct?

Answer: Upon repeal, the required briefings given to applicants for enlistment and appointment regarding standards of personal conduct in the Armed Forces and separations policy will be amended appropriately to reflect the new policy. Specifically, applicants will no longer be briefed that homosexual conduct is not allowed in the Military Service.

Adoption by Gays and Lesbians

Question: What will be the DoD position regarding adoption of children by same-sex couples?

Answer: DoD will continue to use its existing rules and regulations regarding adoption. DoD will continue to recognize legal documentation, such as a court order, of adoption or custody in determining a child's status as a dependent, and consequently a Service member's eligibility for benefits on behalf of the child.

Process for Returning Former Gay/Lesbian Service Members to Active Duty

Question: Will there be standardized procedures to address technical personnel matters such as back pay, promotions, time-in-grade, time-in-service, retirement credit, skill qualification, etc?

Answer: Upon repeal, former members solely discharged under DADT may apply for re-entry; they will be evaluated according to the same criteria and Service requirements applicable to all others seeking re-entry into the military. There will be no preferential treatment for Service members separated solely under DADT, and they will be processed as any other re-accession applicant under Service policies. Services will continue to consider a Service member's previous performance and disciplinary record when determining suitability for re-entry. The Department is not authorized to provide compensation of any type, including retroactive full separation pay, for those previously separated under DADT. In addition, each Service will continue to use current policy/procedure that is used to determine the appropriate grade and Time in Grade credit that the returning member will be awarded, and time in service credit will always be awarded. Finally, former and current Service members may petition their Service boards for the correction of military records or Service discharge review boards, as appropriate, to correct their records.

Process for Returning Former Gay/Lesbian Service Members to Active Duty

Question: Will there be any standardized procedures—additional training, allowance of time to reacquire skills, assistance in filing a correction of records request, assistance in investigating benefit claims from DOD or the VA, etc—given to former service members to help them reintegrate into military service or be compensated for their service?

Answer: Upon repeal, former members solely discharged under DADT may apply for re-entry; they will be evaluated according to the same criteria and Service requirements applicable to all others seeking re-entry into the military. There will be no preferential treatment for Service members separated solely under DADT, and will be processed as any other re-accession applicant under Service policies. Services will continue to consider a Service member's previous performance and disciplinary record when determining suitability for re-entry. The Department is not authorized to provide compensation of any type, including retroactive full separation pay,

for those previously separated under DADT. In addition, each Service will continue to use current policy/procedure that is used to determine the appropriate grade and Time in Grade credit that the returning member will be awarded, and time in service credit will always be awarded. Any claims for redress by Service members previously separated under DADT will be processed according to policies and procedures applicable to all prior Service members, i.e., through Service Boards for Correction of Military Records and Discharge Review Boards.

Process for Returning Former Gay/Lesbian Service Members to Active Duty

Question: Will applicants for return to service be given a medical exam and, if they fail that exam, will they be eligible for retroactive compensation or retirement benefits?

Answer: Upon repeal, former members solely discharged under DADT may apply for re-entry; they will be evaluated according to the same criteria and Service requirements applicable to all others seeking re-entry into the military, which would include a medical exam. There will be no preferential treatment for Service members separated solely under DADT, and will be processed as any other re-accession applicant under Service policies. The Department is not authorized to provide compensation of any type, including retroactive full separation pay, for those previously separated under DADT. Any claims for redress by Service members previously separated under DADT will be processed according to policies and procedures applicable to all prior Service members, i.e., through Service Boards for Correction of Military Records and Discharge Review Boards.

Process for Returning Former Gay/Lesbian Service Members to Active Duty

Question: Would a former member of the Armed Forces who committed crimes while protesting DADT in a separated status be permitted to return to active or reserve component duty?

Answer: Upon repeal, former members solely discharged under DADT may apply for re-entry; they will be evaluated according to the same criteria and Service requirements applicable to all others seeking re-entry into the military. There will be no preferential treatment for Service members separated solely under DADT, and will be processed as any other re-accession applicant under Service policies. Services will continue to consider a Service member's previous performance and disciplinary record when determining suitability for re-entry.

Status of Ongoing Legal Actions

Question: What is the status of pending appeals on cases in the Ninth Circuit and other jurisdictions and what is the government's position on each case?

Answer: As in many cases involving 10 U.S.C. §654 over the years, the Department of Justice continues to defend the United States, the Department, and its Components in litigation before U.S. District Courts and U.S. Court of Appeals, including both "facial" and "as-applied" constitutional challenges to the statute. Active cases as of March 24, 2011, include the following:

- Witt v. Department of the Air Force, No. 3:06-CV-5195-RBL (W.D. Wash.), on appeal, No. 10-36079 (9th Cir.). The Government appealed the District Court's final decision, dated September 24, 2010, which entered judgment for plaintiff on her as-applied substantive due process claim and for the Government on plaintiff's procedural due process claim. Witt v. Department of the Air Force, 739 F. Supp. 2d 1308 (W.D. Wash. 2010). The Government's opening brief is due March 31.
- Log Cabin Republicans v. United States, No. CV 04-08425-VAP (C.D. Cal.), on appeal, Nos. 10-56634, 10-56813 (9th Cir.). The Government has appealed the District Court's decisions and judgment, dated October 12, 2010, invalidating 10 U.S.C. §654 and its implementing regulations on their face and fashioning a world-wide, permanent injunction enjoining the federal government from applying the statute. On the Government's motion, the Ninth Circuit stayed application of the injunctive remedy pending appeal. The Government filed its opening brief on February 25, plaintiff's response is due March 28, and the Government's reply is due April 11.
- Fehrenbach v. Department of the Air Force, No. 1:10-cv-00402-EJL (D. Idaho). On August 11, 2010, plaintiff, an Air Force officer, filed suit challenging the application of 10 U.S.C. §654 and seeking to enjoin his discharge. Thereafter, the case was stayed by the agreement of the parties to allow completion of the administrative process by which the Air Force would decide whether to discharge plaintiff. There has been no subsequent activity in the litigation.
- Almy v. Department of Defense, No. 3:10-cv-5627 (D.D.C.). On December 13, 2010, three former Service members filed a complaint challenging their discharges and the constitutionality of 10 U.S.C. §654 under various constitutional provisions and the Administrative Procedure Act. On February 11, the Department of Justice filed a motion to dismiss or to transfer the case to the Court of Federal Claims.
- Collins v. United States, No. 10-788 (D.D.C.). On November, 10, 2010, plaintiff, a former Service member discharged under 10 U.S.C. §654, filed a complaint challenging the policy reflected in DoD and Air Force regulations providing that those involuntarily separated due to homosexual conduct receive half separation pay. Plaintiff asserts that this policy violates his equal protection and substantive due process rights. The Government's responsive pleading is due May 10.

Status of Ongoing Legal Actions

Question: Will the government's legal position be different during the different phases of implementation—before certification, during the 60 day waiting period after certification and after implementation of repeal is effective?

Answer: The Department of Justice determines the Federal Government's position in on-going litigation based upon the facts, pleadings and the law governing each case.

Sustainment Phase of Implementation

During the sustainment phase of implementation, the implementation plan cited issues that would require reassessment and adjustment, to include equal opportunity, UCMI, privacy and cohabitation, benefits, family readiness, and fiscal impact.

Question: What kinds of actions do you envision being specifically required on these subjects since the implementation plan made such a definitive statement that no further action was required on several of them to include equal opportunity and privacy matters?

Answer: The Department will conduct a follow-on review to monitor and assess effectiveness of implementation of repeal and to determine the adequacy of the recommended actions that are adopted.